

## HOUSE BILL NO. 229

INTRODUCED BY K. PETERSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT IT IS ILLEGAL TO DRIVE WITH ANY AMOUNT OF AN ILLEGALLY POSSESSED DANGEROUS DRUG IN THE BODY AND PROVIDING PENALTIES FOR THE OFFENSE; PROVIDING THAT A POSITIVE DRUG TEST MAY BE USED TO PROVE THE DRIVING OFFENSE; AND AMENDING SECTIONS 61-5-205, 61-5-208, 61-8-404, 61-8-406, AND 61-11-203, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 61-5-205, MCA, is amended to read:

**"61-5-205. Mandatory revocation of license upon proper authority.** The department upon proper authority shall revoke the driver's license or the operating privilege of ~~any~~ a driver upon receiving a record of the driver's conviction or forfeiture of bail not vacated of any of the following offenses, when the conviction or forfeiture has become final:

(1) negligent homicide resulting from the operation of a motor vehicle;

(2) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with ~~a blood~~ an alcohol concentration of 0.10 or more or with any amount of a dangerous drug, as defined in 50-32-101, which is illegally possessed, in the person's body;

(3) any felony in the commission of which a motor vehicle is used;

(4) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(5) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(6) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; or

(7) negligent vehicular assault as defined in 45-5-205."

1           **Section 2.** Section 61-5-208, MCA, is amended to read:

2           **"61-5-208. Period of suspension or revocation -- probationary license -- ignition interlock device**  
3 **required on second or subsequent offense.** (1) The department may not suspend or revoke a driver's  
4 license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year,  
5 except as otherwise permitted by law.

6           (2) (a) A person whose license or privilege to drive a motor vehicle on the public highways has  
7 been suspended or revoked may not have the license, endorsement, or privilege renewed or restored unless  
8 the revocation was for a cause that has been removed. After the expiration of the period of the revocation  
9 or suspension, the person may apply for a new license or endorsement as provided by law, but the  
10 department may not issue a new license or endorsement unless it is satisfied, after investigation of the  
11 driving ability of the person and upon a showing by its records or other sufficient evidence, that the person  
12 is eligible to be licensed to drive in Montana.

13           (b) When a person is convicted or forfeits bail or collateral not vacated for the offense of operating  
14 or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or  
15 a combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with an  
16 alcohol concentration of 0.10 or more or with any amount of a dangerous drug, as defined in 50-32-101,  
17 which is illegally possessed, in the person's body, the department shall, upon receiving a report of  
18 conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of  
19 the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or  
20 collateral for a second, third, or subsequent offense within 5 years of the first offense, the department  
21 shall revoke the license or driving privilege of the person for a period of 1 year and, upon issuance of any  
22 restricted probationary license during the period of revocation to a person for whom the offense was  
23 operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any  
24 drug or a combination of alcohol or drugs or the offense of operation of a motor vehicle by a person with  
25 an alcohol concentration of 0.10 or more, restrict the person to driving only a motor vehicle equipped with  
26 a functioning ignition interlock device. If the 1-year period passes and the person has not completed a  
27 chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license  
28 revocation remains in effect until the course, treatment, or both, are completed.

29           (c) For the purposes of subsection (2)(b), a person is considered to have committed a second,  
30 third, or subsequent offense if fewer than 5 years have passed between the date of an offense that

1 resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

2 (3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department  
3 proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall  
4 stay the license suspension of a person who has been convicted of a violation of 61-8-401 or 61-8-406  
5 and return the person's driver's license. The stay must remain in effect until the period of suspension has  
6 expired and any required chemical dependency education course, treatment, or both, have been completed.

7 (b) If the department receives notice from a court, peace officer, or ignition interlock vendor that  
8 the person has violated the court-imposed ignition interlock restriction by, ~~including but not limited to~~  
9 operating a motor vehicle not equipped with the device, tampering with the device, ~~or~~ removing the device  
10 before the period of restriction has expired, or otherwise violating the restriction, the department shall lift  
11 the stay and reinstate the license suspension for the remainder of the time period. The department may  
12 not issue a probationary driver's license to a person whose license suspension has been reinstated because  
13 of violation of an ignition interlock restriction.

14 (4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in  
15 subsection (2).

16 (5) The period of revocation for a person convicted of any offense that makes mandatory the  
17 revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

18 (6) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial  
19 motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-811 and  
20 subsection (2) of this section."

21

22 **Section 3.** Section 61-8-404, MCA, is amended to read:

23 **"61-8-404. Evidence admissible -- conditions of admissibility.** (1) Upon the trial of a criminal action  
24 or other proceeding arising out of acts alleged to have been committed by a person in violation of  
25 61-8-401, 61-8-406, 61-8-410, or 61-8-805:

26 (a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination  
27 of alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood or  
28 breath, is admissible. A positive test result does not, in itself, prove that the person was under the  
29 influence of a drug or drugs at the time the person was in control of a motor vehicle, as provided in  
30 61-8-401, but a positive test may be used to prove a violation of 61-8-406. A person may not be

1 convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person unless some  
2 other competent evidence exists that tends to establish that the person was under the influence of a drug  
3 or drugs while driving or in actual physical control of a motor vehicle within this state.

4 (b) a report of the facts and results of one or more tests of a person's blood or breath is admissible  
5 in evidence if:

6 (i) a breath test or preliminary alcohol screening test was performed by a person certified by the  
7 forensic sciences division of the department to administer the test;

8 (ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a  
9 laboratory exempt from certification under the rules of the department and the blood was withdrawn from  
10 the person by a person competent to do so under 61-8-405(1);

11 (c) a report of the facts and results of a physical, psychomotor, or physiological assessment of  
12 a person is admissible in evidence if it was made by a person trained by the department or by a person  
13 who has received training recognized by the department.

14 (2) If the person under arrest refused to submit to one or more tests as provided in this section,  
15 proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been  
16 committed while the person was driving or in actual physical control of a vehicle upon the ways of this  
17 state open to the public, while under the influence of alcohol, drugs, or a combination of alcohol and drugs.

18 (3) The provisions of this part do not limit the introduction of any other competent evidence  
19 bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination  
20 of alcohol and drugs."

21  
22 **Section 4.** Section 61-8-406, MCA, is amended to read:

23 **"61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more or with**  
24 **dangerous drug in body.** It is unlawful and punishable as provided in 61-8-442, 61-8-722, 61-8-723, and  
25 61-8-731 through 61-8-734 for ~~any~~ a person to drive or be in actual physical control of a vehicle upon the  
26 ways of this state open to the public while the person's alcohol concentration, as shown by analysis of  
27 the person's blood, or breath, ~~or urine,~~ is 0.10 or more or there is any amount of a dangerous drug, as  
28 defined in 50-32-101, which is illegally possessed, in the person's body, as shown by an analysis of the  
29 person's blood. Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."

1           **Section 5.** Section 61-11-203, MCA, is amended to read:

2           **"61-11-203. Definitions.** As used in this part, the following definitions apply:

3           (1) "Conviction" means a finding of guilt by ~~duly constituted~~ a judicial authority, a plea of guilty  
4 or nolo contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a  
5 person charged with having committed any offense relating to the use or operation of a motor vehicle that  
6 is prohibited by law, ordinance, or administrative order.

7           (2) (a) "Habitual traffic offender" means ~~any~~ a person who within a 3-year period accumulates 30  
8 or more conviction points according to the schedule specified in this subsection:

9           ~~(a)~~(i) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

10          ~~(b)~~(ii) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle,  
11 or negligent vehicular assault, 12 points;

12          ~~(c)~~(iii) any offense punishable as a felony under the motor vehicle laws of Montana or any felony  
13 in the commission of which a motor vehicle is used, 12 points;

14          ~~(d)~~(iv) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or  
15 operation of a motor vehicle by a person with an alcohol concentration of 0.10 or more or with any  
16 amount of a dangerous drug, as defined in 50-32-101, which is illegally possessed, in the person's body,  
17 10 points;

18          ~~(e)~~(v) operating a motor vehicle while the license to do so has been suspended or revoked, 6  
19 points;

20          ~~(f)~~(vi) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to  
21 any person to stop at the scene of the accident and give the required information and assistance, as  
22 defined in 61-7-105, 8 points;

23          ~~(g)~~(vii) willful failure of the driver involved in an accident resulting in property damage of \$250 to  
24 stop at the scene of the accident and give the required information or failure to otherwise report an  
25 accident in violation of the law, 4 points;

26          ~~(h)~~(viii) reckless driving, 5 points;

27          ~~(i)~~(ix) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

28          ~~(j)~~(x) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and  
29 61-6-302, 5 points;

30          ~~(k)~~(xi) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not

1 apply to operating a motor vehicle within a period of 180 days from the date on which the license expired);

2 ~~(ii)~~(xii) speeding, except as provided in 61-8-725(2), 3 points;

3 ~~(iii)~~(xiii) all other moving violations, 2 points.

4 ~~(3)~~(b) There may not be multiple application of cumulative points when two or more charges are  
5 filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only  
6 the number of points for the specific conviction carrying the highest points is chargeable against that  
7 defendant.

8 ~~(4)~~(3) "License" means any type of license or permit to operate a motor vehicle.

9 ~~(5)~~(4) "Moving violation" means a violation of a traffic regulation of this state or another  
10 jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle  
11 upon a highway, as the term is defined in 61-1-201.

12 ~~(6)~~(5) ~~A traffic regulation~~ "Traffic regulation" includes any provision governing motor vehicle  
13 operation, equipment, safety, size, weight, and load restrictions or driver licensing. A traffic regulation  
14 does not include provisions governing vehicle registration or local parking."

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